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S. E. 875; *Slaughter v. Denmead*, *supra*. The loss of rent on a building not completed by the time a lease, already entered into, is to take effect, is recoverable as damages in an action by the owner of the property against one who has wrongfully prevented the completion of the building by the specified time. *Burruss v. Hines*, *supra*. Where a contractor is prevented by the other party from performing his engagements, he is entitled to recover the full consideration less the cost of fulfilling the contract. *Alleghany Iron Co. v. Teaford*, 96 Va. 372, 31 S. E. 525; *Barrett v. Raleigh, etc., Co.*, 55 W. Va. 395, 47 S. E. 154. And the fact that the plaintiff can prove only with *reasonable*, and not with *absolute*, certainty what would have been the cost to him of performing his undertaking, does not defeat a recovery. *Barrett v. Raleigh, etc., Co.*, *supra*.

DIVORCE—DESERTION—INTERVENING INSANITY AS BAR.—The defendant willfully deserted his wife. Four months thereafter he was adjudged insane and confined as a lunatic. Three years, the time required by statute for a divorce on the ground of desertion, having elapsed, the wife brought suit therefor. *Held*, the wife is not entitled to a divorce. *Wright v. Wright* (Va.), 99 S. E. 515.

Against reason and principle and in opposition to the apparent weight of authority, it has been held that a husband who willfully deserts his wife while sane, and remains away for the statutory period required to warrant a divorce in her favor, cannot be excused on the ground that before the expiration of the statutory period he became insane. *Douglass v. Douglass*, 31 Iowa 421.

A decree of divorce will be granted to the plaintiff, where it appears that the defendant continued such abandonment for the statutory period while he was of sound mind, although he later became insane and, at the time of the granting of the decree, is a lunatic. *Fisher v. Fisher*, 54 W. Va. 146, 46 S. E. 118. It is now well settled, in England and in the United States, that proceedings for the dissolution of a marriage can be instituted and maintained against a husband or wife who, before the proceedings are instituted, has become insane. *Mordaunt v. Moncreiffe*, L. R. H. L. Sc. 374; *Garnett v. Garnett*, 114 Mass. 379.

Desertion is, in legal contemplation, the actual breaking off of the matrimonial cohabitation, without justification, coupled with an intent, in the mind of the offender, not to return. *Crounse v. Crounse*, 108 Va. 108, 60 S. E. 627. In Virginia it is provided by statute that "where either party willfully deserts or abandons the other for three years, such divorce [divorce from the bond of matrimony] may be decreed to the party abandoned." Va. Code, 1904, § 2257. Such a statute is construed to mean that not only must the act of deserting be willful, but that the abandonment must be willfully continued throughout the statutory period. *Kirkpatrick v. Kirkpatrick*, 81 Neb. 627, 116 N. W. 499, 16 L. R. A. (N. S.) 1071.

A lunatic is incapable of volition. See *Worthy v. Worthy*, 36 Ga. 45. By the weight of authority and reason, in the case of desertion no part of the time during which the deserting spouse was insane can be reck-

oned as part of the period required by statute to constitute desertion and thus allowed the offender as a *locus penitentiae*. *Kirkpatrick v. Kirkpatrick*, *supra*; *Storrs v. Storrs*, 68 N. H. 118, 34 Atl. 672; *Blandy v. Blandy*, 20 App. D. C. 535.

Insanity at the time of the commission of the acts constituting the alleged ground for divorce is a full defense. *Broadstreet v. Broadstreet*, 7 Mass. 474. Cruel and inhuman treatment do not warrant a divorce when such treatment is the result of insanity. *Tiffany v. Tiffany*, 84 Iowa 122, 50 N. W. 554. Failure by a husband to provide for and support his wife is not a ground for divorce, though made so by statute, where such failure arises from insanity. *Baker v. Baker*, 82 Ind. 146.

The decision in the instant case seems to be based on sound principles of judicial logic, and is in accord with the weight of authority on the subject.

EVIDENCE—PERJURED TESTIMONY—PRIVILEGE.—The defendant gave evidence before a grand jury, and upon this evidence an indictment was found against the plaintiff. The evidence in question was false and was known by the defendant, when he gave it, to be false. The accused was acquitted of the charge, and later brought an action of malicious prosecution against the defendant. The question arose as to whether the false testimony was privileged. *Held*, it is not privileged. *Kintz v. Harriger* (Ohio), 124 N. E. 168. See NOTES, p. 120.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—RELEASE OF CLAIM.—A stone mason, in the course of his employment by a granite company, had lime splashed into his eyes. The injury which followed necessitated the removal of one eye; and a settlement for compensation was made by the workmen with his employer and the insurer of the employer, on the mutual assumption that he was entitled to compensation for the loss of only one eye. A release of all further claims against his employer and the insurer was executed by the employee on the same assumption. Later, it developed that the workman's other eye had been severely burnt. An action was brought, under the State Workmen's Compensation Act, for compensation for this further injury. *Held*, the previous release constitutes no bar to the action. *Zinken v. Melrose Granite Co.* (Minn.), 173 N. W. 857.

Workmen's Compensation Acts, as a rule, encourage agreements between employers and employees dealing with compensation for injuries arising from accidents. It is usually provided that such agreements must be filed with, and approved by, the Industrial Accident Boards created by the Acts before becoming final, and that no agreement by an injured employee to waive his rights to compensation under the Act shall be regarded as valid.

Where the widow of an employee of a creamery company made an agreement with the creamery company and its insurer, whereby she was to sue, for the death of her husband, the concern whose motor truck collided with the creamery company's wagon and caused his death, and that if what she recovered should exceed the statutory